FOREWORD: THE FUTURE OF MULTILATERALISM IN A PLURAL WORLD

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This edition of the New Zealand Journal of Public and International Law is comprised of a selection of addresses and articles from the 17th Annual Conference of the Australia New Zealand Society of International Law.[1] This conference was held at Victoria University of Wellington from 2 to 4 July 2009. The theme of the conference was "The Future of Multilateralism in a Plural World". At the end of the first decade of the 21st Century, it seemed appropriate to examine the future of multilateralism in light of the challenges posed by what sometimes appears to be an increasingly fractious world.

Pluralism is represented in the international system in a number of ways. Of course, one of the inherent characteristics of a multilateral system is that it is, by definition, dealing with more than one entity. Even when one focuses on the quantative aspects of the international system, there has been a significant change in the membership of the United Nations since it was founded in 1945. As the Governor-General points out in his address, the United Nations membership has transformed from 51 states in 1945 to 192 states in 2010. This growth in numbers in itself poses a challenge to the efficacy of an international system which often operates (or attempts to do so) on the basis of consensus. But far more important has been the qualitative nature of the change. From 1945 when the United Nations was comprised largely of developed countries, the United Nations has seen an enormous increase in numbers of state members, many of whom obtained their membership through decolonisation processes as well as the disintegration of formerly singular states. The majority of current members are now developing countries, although within that group there is significant diversity. These countries include large developing states with strong emerging economies, small

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[1] An excellent summary of a range of papers and their intersection with the theme of the Conference, by Karen Scott, is available online. See Karen Scott "Annual Conference – Summation and Commentary" *ANZSIL Newsletter* (Canberra, Australia, November 2009) <http://my.chalkmail.com>. The newsletter also contains reports of each session of the conference.

island states, oil producing states and extremely poor states. There is a huge variety of cultures, languages, economies and religions represented in the United Nations. These differences lead to a diversity of national perspectives and agendas that inevitably slows the processes of multilateral institutions.

Another aspect of pluralism is that there are many more actors operating in the multilateral system than states. Although the system is still state-centric, it is no longer exclusively so. The emergence of human rights has opened a space for individuals to play a role in the international legal system as a subject of international law and in many instances as an actor in challenging state compliance with international norms. Greater numbers of non-governmental institutions and civil society groups have informal and formal roles within multilateral processes, partly in reflection of a call for greater democracy in international institutions.

There have been many criticisms of the operation of the multilateral system in recent times. Concern has been expressed that many multilateral institutions have effectively ground to a halt and are unable to achieve their objectives. At the 17th ANZSIL Conference the President, Professor Campbell McLachlan, highlighted an issue of the Economist from July 2008 with a picture of the Tower of Babel on the front cover which suggested that the United Nations was dysfunctional. "Is this any way to run the world?" thundered the magazine. Indeed, a number of the papers at the conference focused on the considerable challenges facing important international institutions, including the World Trade Organisation and the problems facing states looking to establish a climate change regime for the period after 2012. In his excellent keynote address reproduced in this volume, Colin Keating identified that approximately 20% of the United Nations membership is under consideration by the Security Council, implying that the peace and security architecture has not been as effective as originally hoped. He argues that the multilateral security system is "creaking ominously" as a result of challenges posed during the last decade. In particular, the legitimacy of the Security Council, the main component of the security system, is heavily criticised. Although not all the news is bad, the address is a sobering reminder of the need for United Nations reform.

The legitimacy of multilateral systems, and particularly the Security Council, in terms of the role of individuals is a theme explored by Christopher Michaelsen. He focuses on the problems of due process contained within the Security Council's Resolution 1267 sanctions regime aimed at individuals associated with Al-Qaida, Osama bin Laden or the Taliban. The inability of individuals listed to challenge, or even learn of, their inclusion in the regime has been acknowledged by the European Court of Justice as a breach of fundamental rights, and Michaelsen provides a realistic evaluation of the options for reform of this process.

The effect of pluralism on multilateral systems is often referred to in terms of clashes of culture and language. Two other papers in this volume address these issues. Jacqueline Mowbray's paper discusses the practical and conceptual problems arising from the fact that more than 6000 languages are spoken around the world and yet multilateral institutions have few official languages, and even fewer working languages, dominated by English. She eloquently makes the case that this can lead to

the practical and symbolic exclusion of individual and states. Even though efficiency is an important goal of international institutions, Mowbray suggests that adopting a small number of working languages that largely represent developed, European countries "can function to create patterns of inclusion and exclusion along geographical and political lines, favouring Western liberal democracies and major powers at the expense of other political systems and the developing world".

In a thought-provoking piece, Catherine Renshaw, Andrew Byrnes and Andrea Durbach evaluate the arguments for regional or national human rights institutions in the Pacific. As they point out, local cultural practices may at times appear to conflict with international human rights norms, which requires a sensitive balancing. National human rights institutions, they argue, are perhaps better equipped than regional institutions to navigate the rivers of local culture while advocating for, and implementing, human rights. In addition, concerns about sovereignty may be alleviated by national institutions, provided funding issues and problems of independence do not undermine the institution's effectiveness.

Despite the concerns of academics and practitioners about the future of multilateralism, the message from the conference was that, in many cases, the news is good. Roger Clark's address to the conference illustrates that there is a developing system of international criminal law, best exemplified by the creation of the International Criminal Court. His survey of multilateral agencies, treaties and tribunals dedicated to aspects of international criminal law leaves the reader with the sense that the international criminal law system is largely working well, in part due to the plurality of structures and arrangements.

Christopher Joyner also suggests that plurality can be supported in the multilateral system through the judicious use of reconciliation mechanisms. Reconciliation, he argues, focuses on values of dialogue, respect and tolerance. Therefore, although conflicts often engage a variety of actors and interests, reconciliation is a mechanism through which states and multilateral institutions can seek to respond to calls for justice and the need to build enduring relationships without conflict. Thus, the multilateral system can employ techniques that recognise and accommodate plurality rather than ignoring it.

The positive note about multilateralism in a plural world was best exemplified by the Governor-General's address. His Excellency The Honourable Sir Anand Satyanand reminded the audience of the importance of the multilateral system to countries such as Australia and New Zealand. Although he acknowledged that multilateralism faces continuing challenges such as the financial crisis that encourage insularity, the Governor-General emphasised that the multilateral system was capable of adaptation to change. The challenge for international lawyers is to continue to promote the rule of law and human and civil rights, and to look for novel ways to do this.

The theme of the conference, "The Future of Multilateralism in a Plural World" is comprehensively explored by the papers in this volume. Pluralism is a natural part of the system of international law and politics, but the last decade has seen new challenges arising from the

continuing changes in the actors and issues in the international community. It is clear that although in some contexts the multilateral system is coping with these problems, political and legal processes must be capable of responding to new dilemmas. The alternative is to see multilateral institutions and processes wither to the point that they lose legitimacy and effectiveness.